

THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Minutes for the Regular Meeting of November 15, 2001

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, November 15, 2001, at 6:30 p.m. in the cafeteria of the Martha's Vineyard Regional High School, Edgartown-Vineyard Haven Road, Oak Bluffs, Mass.

At 6:38 p.m., a quorum being present, the Meeting was brought to order by Richard J. Toole, a Commission member at large from Oak Bluffs, the Chairman of the Land Use Planning Committee (LUPC), and the Hearing Officer for that evening. *[Commission members present at the gavel were: J. Athearn; C. Brown; M. Cini; M. Donaroma; D. Flynn; J. Greene; T. Israel; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; A. Woodruff; and R. Zeltzer. Mr. Best arrived while the Notice of Public Hearing was being read, at 6:40 p.m. All these members stayed until the end of the Meeting.]*

Continued Public Hearing, Session Four: Down Island Golf Club (DRI #543)

Mr. Toole read into the record the Notice of Continued Public Hearing for the Down Island Golf Club Application (DRI #543). *[See the Full Commission Meeting File of November 15, 2001 (the meeting file) for a copy of said notice.]* He then reiterated the ground rules that he had set down for the second and third sessions of the Hearing on October 18 and November 1, respectively. *[See pages 3-4 of the Full Commission Meeting Minutes of October 18, 2001 for the ground rules.]*

Disclosure by James Athearn.

At this point James Athearn, a Commission member at large from Edgartown, made a disclosure. He had been, he said, a member of the executive committee of the Vineyard Open Land Foundation (VOLF) for several years. "I was recently informed at a meeting that I did not attend," he continued, "there was a discussion with an agent of the Down Island Golf organization about Vineyard Open Land Foundation receiving a conservation

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restriction from Down Island Golf. Therefore, I have resigned from VOLF to avoid any appearance of conflict, which I think ... is a very remote chance ... But I'm going to take no chances."

Applicant's Presentation.

Mr. Toole noted that this evening the Applicant would be addressing the issues of traffic, employee housing, public access to trails and overlooks, conservation restrictions, and the Betterment Fund. This would be followed, he said, by Staff Reports, Commissioner questions, testimony from Town Boards and Officials, and testimony from the public.

Robert Mone, an agent for the Applicant, explained that the Applicant's team would be wrapping up their presentation with reports from traffic engineer Ken Petraglia, archaeologist Deborah Cox and golf course operations consultant Charles Passios. First, however, they would be answering questions left over from earlier sessions.

A. Ronald Mechur on Issues Raised Previously.

Ronald H. Mechur, an Oak Bluffs appraiser, planner and consultant who was acting as the Applicant's agent, began by reporting that Herb Putnam, a member of the Applicant's team, was in Boston "under good medical care, and hopefully he'll be back soon." Mr. Mechur then addressed five issues.

First, Mr. Mechur took up the notion, presented by some members of the opposition, that **some sort of imminent conservation purchase of the land in question was in the works**. "I really need to dispel this perception," he declared. "It took me by surprise." Messrs. Mone and Putnam, he explained, had signed nondisclosure agreements when they had engaged in discussions with the Martha's Vineyard Land Bank Commission some months earlier and so were not free to speak publicly about those negotiations.

Thus, Mr. Mechur said, James Ward, an attorney for the Applicant, had framed the following response: "You all need to know that there are no ongoing discussions with the Martha's Vineyard Land Bank Commission or any other agency or conservation agency regarding the purchase of Mr. Kupersmith's property."

Secondly, Mr. Mechur reported that the **Department of Housing and Urban Development had funded the first five units to be built on the one-acre lot donated to Island Elderly Housing** by the Applicant. The funding for the second five units, he said, was likely during the next round in Washington in 2002.

Third was the issue of **electrical generation on the site**, raised in the session of October 18, 2001 by Kate Warner, the West Tisbury Selectmen's Appointee. Mr. Mechur described how they had spoken to George Laura of NSTAR, who had indicated that there was sufficient power grid service to Martha's Vineyard and that there should not be any

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problem with a project of this nature. "And if there was, they'd probably be out of business. So they're very confident that this was not an issue," remarked Mr. Mechur.

Furthermore, he continued, the Applicant's team had gone to a golf course similar to the one being proposed that included a 42-bed dormitory, site lighting, a clubhouse and pumping irrigation. The annual kilowatt usage there was 686,000 kilowatts, said Mr. Mechur. In addition, he had done his own calculations for a 91-house year-round development based on his own electrical usage, and he had come up with a figure of close to 1,100,000 kilowatts per year. If half of those 91 residences were used only seasonally, he said, "it would still be on balance basically the same [as the golf course estimate]."

Another factor, continued Mr. Mechur, was the siting of the clubhouse along a south-southwest axis to ensure adequate solar gain, as well as an overhang to prevent summer overheating.

Regarding the **moth habitat in the pitch pine forest**, Mr. Mechur reported that he had submitted that evening an aerial photograph of the entire property showing the dominant pitch pine location, which was in the old Webb's Campground area, in addition to some interspersing of pitch pine at other locations. The Applicant was prepared, he said, to discuss this further with Hanni Dinkeloo (Endangered Species Counsel, Natural Heritage & Endangered Species Program, Division of Fisheries & Wildlife).

The Hearing Officer interrupted the proceedings to ask Michael Kemly of Oak Bluffs, who was standing to the east side of the room, to remove from his body a sandwich-board sign with an opposition message. "I think it's inappropriate," Mr. Toole declared. Mr. Kemly protested that the sign was appropriate, and he asked if there was some Point of Order. "I'm running this Hearing and I'm making a decision," retorted Mr. Toole. "Either that or sit down in the back," he ordered. "All right, I'll sit in the back," responded Mr. Kemly, who did so. The Hearing session continued.

Mr. Mechur also noted that the following week the Applicant would be submitting a routing plan overlaying the pitch pine habitat to demonstrate that said routing would not interfere with the pitch pine habitat.

Lastly, Mr. Mechur addressed the **fiscal impact question**. John Mullin of Mullin Associates Inc. had submitted figures for fiscal impact to the Town if the houses in the alternative development ran to \$350,000, \$550,000 and \$750,000. *[See the meeting file for a copy of this addition to Mr. Mullin's report.]* "As he said to you, 'As if I was going to court,'" related Mr. Mechur. "And the conclusion is, the golf course is a \$220,000 net loss to the Town. He stated before that the \$350,000 average house that he selected, because it was an Island-wide number that he picked, was a \$608,000 detriment, in the red. His new number for \$550,000 is \$375,000 in the red, and his number for \$750,000 average house for this project is \$142,000 in the red."

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[Staff Secretary's Note: Mr. Mechur apparently misspoke when he said that the golf course would be a net loss to the Town of \$200,000. According to Mr. Mullin's testimony on page 8 of the Minutes of November 1, 2001, with the golf course would yield a profit to the Town of roughly \$247,328.]

Mr. Mechur summed up, "So I think this concludes that as most people in the planning profession [and] all the literature supports, is that housing is not a good project for any Town."

B. Charles Passios Responds to Questions Raised Previously.

Charles Passios, the golf course operations consultant, addressed the question raised about the **practice fairway** by William M. Wilcox, the Commission's Water Resources Planner. *[Ibid., page 12.]* Mr. Passios explained that the practice fairway was a low-impact area and that it would receive nitrates only during the grow-in period. After that, he said, it would be receiving direct irrigation from the effluent of the wastewater treatment system.

Mr. Passios went on that Mr. Wilcox had also remarked on what he considered to be an **excessive estimate for the project's water use**. *[Ibid.]* Mr. Passios displayed a chart showing for the original proposal a need for 43.2 million gallons per year of irrigation water for the property. As shown on that chart, the old managed turf area was 75 acres.

Mr. Passios said that he was submitting that evening a new chart with the adjusted area of 68 acres of managed turf, plus approximately 7 acres of areas like the borders of the clubhouse where irrigation would also be necessary. Under this format, the irrigation would require approximately 29 million gallons per year. "That is a reduction of 30 percent from the original filing," noted Mr. Passios.

With respect to the **wastewater treatment plant capacity and its ability to handle the flow from the M.V. Ice Arena**, continued Mr. Passios, it was not anticipated that this would require any changes to the current treatment plant design, based upon what consultants had told them.

C. Robert Mone Responds to Questions Raised Previously.

Mr. Mone added to Mr. Passios' testimony that the ice arena had also been chosen because the season when it produced that most effluent – the winter – was the season when the golf course would be producing the least. "So it's a natural complement to each other, the wastewater treatment plant" he observed, "and also it helps it run better because it's got product going into it in the winter."

Mr. Mone addressed the **question of property ownership and who would be responsible for upholding any conditions**, raised by Kerry Scott in the previous Hearing session. *[Ibid., page 25.]* "Mr. Kupersmith and Down Island Golf are the sole

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owners of the 273, plus or minus, acres," declared Mr. Mone. Other parties that Ms. Scott had mentioned no longer had any financial interest in the property, he said, and were no longer involved in the project.

Mr. Mone continued, "Mr. Kupersmith owns no other property on the Island in his name or in any other nominee. This can be checked in the Registry if one does not believe it, and he does and has rented a house in Oak Bluffs."

Mr. Mone turned to the issue of **who would be responsible for the commitments promised by the golf course to the community**. He explained that the club membership would be equity membership, that is, the members would actually own the golf club. "They would be responsible for these promises," stated Mr. Mone. "They would also be responsible for the entire golf course. So I think we can feel pretty confident that these 300 people will live up to their commitments."

Next, Mr. Mone addressed the request by Governor's Appointee Richard L. Taylor for the **names of carriers who issued environmental impairment insurance policies**. [See the Minutes for the Regular Meeting of October 18, 2001, page 24.] He had submitted to the record that evening, he said, information about four of those carriers.

Those carriers were: American International Group, Inc., a \$250 million to \$500 million company with an A++ (superior) rating according to A.M. Best Company standards; Fairfax Financial Group, a \$50 million to \$100 million company with an A- (excellent) rating; Markel Corporation Group, a \$250 million to \$500 million company with an A (excellent) rating; and Royal & Sun Alliance Insurance Group, a \$1.5 billion to \$2 billion company with an A+ (superior) rating. These companies had carried policies not only for golf courses, but for other businesses "with pollution issues," Mr. Mone added.

Moreover, Mr. Mone continued, the 300 equity members had "an additional responsibility to the community in that they own this property, just like your homeowner's policy. You own the house and you have homeowner's insurance, but the ultimate responsibility for your property falls to you. So in the long run, you've got insurance, plus 300 people to look to for relief if there was a problem."

Mr. Mone then observed, "Some of the distrust that seems to flow around this project, it upsets me because I don't think any of these people who want to be members want to do something bad to this community. I think they want to be good neighbors and do a good job."

Mr. Mone responded to the **question raised by Ms. Scott about the Tisbury Marketplace's being included in the nitrogen loading offset figures**. [See the Meeting Minutes for the Special Meeting of November 1, 2001, page 26.] He pointed out that in Mr. Wilcox's conservative scenario, those figures had been withdrawn; Mr. Wilcox's numbers indicated nonetheless that the mitigation measures would balance any nitrogen loading generated by the proposed golf course.

D. Ken Petraglia on Traffic Issues.

Traffic engineer Ken Petraglia related that his firm had submitted its first traffic report in September 1999. He then described what had been included in that intensive data-collection program. Among the data looked at were peak-hour figures for intersections suggested by Commission Staff, he said. He had concluded from said data that the net effect of the trips generated by the proposed golf club would amount to "no significant impact." This meant, he explained, that in the future, with or without the project, the intersections they had studied would behave essentially the same.

Since September 1999, Mr. Petraglia went on, the project had been amended, with three changes made: the addition of 30 campsites; the addition of the effects of the tennis club planned at the blinker intersection; and the addition of a second access point on the Edgartown-Vineyard Haven Road at the M.V. Ice Arena. The ice arena access, Mr. Petraglia continued, was expected to attract about 25 percent of the total site-related traffic. With these amendments, he said, he had repeated the analysis process and had come up with the same results – essentially "no significant traffic impact."

Mr. Petraglia related that he had also analyzed the site access points and had consulted with Commission Staff. His conclusion was a level of service of B, while the Staff had come up with a level of service of C. "Traffic isn't an exact science," he remarked, "but we're essentially saying the same thing, whether it's level of service B or level of service C. There really is no significant traffic impact."

The **mitigation measures proposed**, said Mr. Petraglia, included the addition of the ice arena access road and a recommendation that the public bus line include a stop at the site (although this had not been figured into his analysis, he noted).

To address the issue of sight distance on Barnes Road looking north, Mr. Petraglia reported, two measures had been recommended: to increase the sight distance available by trimming a lot of the vegetation along the north side of the drive; and to reduce the requirement for the amount of sight distance needed by suggesting a reduction in the speed limit along that stretch of Barnes Road.

Mr. Petraglia then described how there would be four special events each year at the club – tournaments that would generate more than normal traffic – and how the Applicant was committed to having police details to control that traffic on those occasions. Finally, he noted, although it was not yet clear what measures the Town of Oak Bluffs would be taking at the blinker, the Applicant had agreed to contribute to the improvements required once this had been decided.

Mr. Petraglia added that the Barnes Road access had been used in the past for the Webb's Campground and had presented no problems, nor were there currently any problems at the ice arena access point.

E. Ron Mechur on Staff Housing Issues, Trails and Conservation Restrictions.

Mr. Mechur pointed out another element of the plan related to the traffic: the Applicant's offer of a 40-foot-wide right of way to the heretofore landlocked Town parcel. He then related how the **employee housing** would now be contained in four cottage-style units instead of a single larger structure. "One of the issues in your Denial Decision was sensitivity to the neighborhood character and the scale of the buildings," he remarked.

Mr. Mechur disgressed: "Let me also say that Bob [Mone] and I and Herb [Putnam] during this review process – by the way, we took your Denial very seriously about the issues you raised and examined them – and one of the things that we did was we developed a comparison matrix for our work over the past year ... and we put Vineyard Acres II in one column, our Denial in another and the Remand Plan in another to make sure that [we complied with] the standards you have set ... [W]e have really made a genuine effort to meet every one of your issues and concerns, and I appreciate Bob's comment about 10 minutes ago about his feelings about what people think about the perception of this club and the members."

Turning back to the issue of the dormitories, Mr. Mechur noted that each would be around 2,200 square feet with a veranda hallway, a bathroom and a kitchen and that each employee would have his own 100-to-125-square-foot bunk space. They had eliminated the idea of a dorm quarters where everyone could gather after considering the likely average ages of the service people and the caddies, he added.

Mr. Mechur moved on to the matter of the **public trails on the site**. Under the original plan, he said, some of those trail locations – like the Road to Farm Neck – had been rerouted. Nonetheless, the Oak Bluffs Trails and By-Ways Committee had endorsed that trail plan. But with about 60 additional acres in the new proposal, he pointed out, all the trails would stay in their original locations.

Archaeologist Deborah Cox, who would be speaking later, had done extensive research on the history of these trails, noted Mr. Mechur. "To dispel another notion tonight," he declared, "the public does not have rights to these trails. But through the conservation restriction and easement that we're going to grant, the public will have rights to all the trails all year round for hiking, walking, biking and horseback riding."

Mr. Mechur mentioned that Staff member William Veno had come up with two good suggestions. Mr. Veno had recommended that the Road to Farm Neck, which would remain intact because the clubhouse had been moved, be made available for equestrian use. More importantly, said Mr. Mechur, Mr. Veno had pointed out that one of the holes could be shortened up to a par three and another lengthened to a par four to eliminate one of two trail crossings by the course. Mr. Mechur said he had spoken to the course designer and it looked like a 95 percent possibility that this change would be made.

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As for another employee issue, Mr. Mechur continued, each staff member would be signing a Employee at Will Agreement whereby he agreed to the requirement that he be housed in the dormitory. "That solves the questions about employees of this club using available rental space... on the Island during the summer," Mr. Mechur noted, adding that if space was available, the Applicant would put a notice in the newspapers in the spring so that other Island businesses could use this resource for their employees.

Mr. Mechur also spoke of the new linkage between trails that the Remand Plan would provide, illustrating his point by referring to a slide.

Turning to **the conservation restriction**, Mr. Mechur described the long discussions the Applicant's team had had with the Vineyard Open Land Foundation over two months. The executive committee of the foundation had met and had gone over the CR with a fine-toothed comb, he said. He showed the areas the conservation restriction would cover using a color slide, with the restricted zones in green. Using the same site plan, he went over the area of archaeological restriction, the trailhead parking, the clubhouse, the clubhouse parking and the campground check-in.

Mr. Mechur then deferred to **Ivo Meisner, a VOLF trustee as well as its legal counsel**. The mission of his organization, explained Mr. Meisner, was to preserve open places on the Vineyard for the purposes of recreation and conservation. "It does this by acquiring control of strategic tracts of land," he said, "and dedicating all or part thereof to public purposes such as recreation and conservation. It also develops tracts of land, as appropriate, as a way to preserve the character to the greatest extent feasible and practical by working with and assisting other individuals and organizations in their efforts to preserve the rural character of this Island."

Mr. Meisner continued that the Applicant had asked the VOLF board to comment on the proposed conservation restriction and that their response dated April 6, 2000 was part of the record. Recently, he noted, Mr. Kupersmith had requested that they review the latest draft of the restriction, with the view of becoming the grantee and steward of the conservation restriction. The board had suggested various changes, a process which he said was continuing.

In view of all these factors, Mr. Meisner concluded, the foundation had agreed to the concept of accepting the grant to the conservation restriction, again acting as a steward, all subject to the mutual approval of the final terms as well as the approval of the project by the Commission and by the Town of Oak Bluffs. "In the view of the executive committee of the foundation, the proposed conservation restriction and the plan of which it is a part both represent good examples of the mandates of the foundation that I previously alluded to," he stated.

Mr. Mechur then described how over the past few weeks he had met with the Oak Bluffs Trails and By-Ways Committee. There was a letter from that committee in the record supporting the trail concept, he said. One committee suggestion accepted by the

Applicant had been their recommendation to have a trailhead parking area for the public. Another had been for the committee to participate in the site work, "which we agreed to as well," noted Mr. Mechur. A third suggestion had been the placement of a gazebo at the top of the overlook. Mr. Mechur reiterated that the acquisition of more acreage had allowed the Applicant to put more land into conservation.

F. Deborah Cox on the Archaeology of the Site.

Deborah Cox of Public Archaeology Laboratory (PAL) described how she and her colleagues had spent a long time on the site, resulting in an intensive archaeological survey. Said survey had included the excavation of small test pits and the screening of soil to look for artifacts, she said. Three archaeological sites had been located on the property, Ms. Cox continued, and only one of those had been adjudged to be significant; this was near the campground, near the west side of the property.

Ms. Cox explained that the Applicant would grant an archaeological easement on that site, so it would be protected. "The other two sites, after evaluation, were found to not be significant," she noted. In addition, two stones on the south side of the property near the entrance would be protected. "They are stones that some said have some significance to the Native American community," she remarked.

Ms. Cox had also researched the history of the trails on the site, she added, in an attempt to determine how long they had been used

G. Robert Mone on the Membership Structure and the Betterment Fund.

Mr. Mone began by pointing out that the **membership structure** for the Down Island Golf Club was in fact the opposite of the typical membership on the Island of Hilton Head, a place to which the proposed facility had been compared in an earlier Hearing session. [*Ibid.*, pages 19-20.]

"Hilton Head was designed to be a transient golf center," Mr. Mone explained. "It was designed for people coming for weekends, and it was designed primarily for public play to generate a lot of money. This course has a membership that is all-inclusive on the Island with people of means that are going to buy equity memberships, that includes an Island membership that Herb [Putnam] and I worked on that we feel is extremely generous and very helpful to fulfilling some desires of people who live on the Island that don't have a lot of money that want to play golf."

Mr. Mone then described how over 60 students played on the high school golf team and that the Applicant was offering the team the use of the course. In addition, he said, it was possible that in the future members of the team would want to become Island members. He again stressed that the club would be all-inclusive, with women and minority members already on board to join. "And the vast majority of these people are people

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who already live here, already own homes and have roots," he emphasized. "They're your Vineyard neighbors, not new people."

The Island membership would contain 150 people, Mr. Mone continued, "and we've made it as democratic as possible." A lottery would determine who got a membership, and said membership would be for one year, with a lottery conducted each year with everyone's name going back in. "So no one gets shut out," he said. "You don't get in the first year, there's a good chance you get in the second year."

In addition, a person with a membership at another Island golf club could not enter his or her name in the lottery, said Mr. Mone. The other requirement, he added, was that Island members would have to be year-round residents. "Which, I suppose, people could say, 'How're you going to figure that out?' We'll just do the best we can," he commented. "Herb and I will be very diligent on who gets screened."

So far, Mr. Mone went on, 250 people had expressed interest in acquiring an Island membership. Island members, he noted, would be able to play seven days a week after two o'clock and would have the same guest privileges as the equity members. "So this thing isn't just a restricted situation," he said. "It's very wide open, and I think it's very generous."

Mr. Mone mentioned that there would be no PGA tournaments of any kind; the four tournaments that had been referred to were solely for the purpose of fund raising for Island-wide concerns. In addition, the dues raised from the Island memberships, plus the daily greens fees those members would pay, would go to the Town of Oak Bluffs. In the wintertime, he pointed out, the course would be "basically open to everyone, as long as the course conditions can handle it."

As for the **Betterment Fund**, Mr. Mone said, this would be supported by the four annual golf tournaments proposed by the Applicant. The funds raised would go toward the causes of affordable housing, education, conservation and health needs, he concluded.

Staff Report by David Wessling; Questions Posed to Mr. Wessling by the Members.

David Wessling, the Commission's Transportation Planner, began by noting that the method used to evaluate the site access and level of service by Mr. Petraglia was "compliant with the Commission's guidelines." Secondly, he said, "I generally concur with the conclusions Ken Petraglia presented tonight."

Oak Bluffs Selectmen's Appointee Kenneth N. Rusczyk wanted to know if Mr. Wessling had investigated **how many trips would be generated by a 91-house development**. "I did not," answered Mr. Wessling.

Edgartown Commission member at large Christina Brown referred to Mr. Wessling's Staff Report dated November 7, 2001. Had he heard anything from the Applicant, she

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wondered, about the **County Road access proposal**? *[See the final page of Mr. Wessling's report, a copy of which can be found in the meeting file.]* Mr. Wessling explained that James Ward, the Applicant's attorney, had told him that the strip of land in question was not part of an access.

Tisbury Commission member at large John Best asked for a **description of the access road through the M.V. Ice Arena**. Specifically, he wanted to know if the entrance and routing would be separate from the existing entrance and routing for the hockey facility.

Mr. Wessling replied that the current curb cut would be used and the existing driveway would be used as the driveway to get to the rear portion of the lot. As it continued into the golf course site, the service road would have to incline, he said, because of the different grade, and he had a schematic plan that showed this. Mr. Wessling also described how the renovations to the arena would change the location of its main entrance to the back of the lot, and thus the parking for that facility would be moved to that area.

Would the parking in the back be in addition to what to the arena had now and would it be in place of the current parking? asked Mr. Best. Mr. Wessling deferred to Mr. Mone, who is more familiar with the workings of the ice arena.

Mr. Mone explained that a very large locker room area was going to be added to the ice arena building, so the parking as well as the driveway going into the property would be redesigned. "The idea is to utilize the property behind the rink to the right as you drive past the building to provide new parking," he said, "because the entrance to the rink will probably end up being on the back of the building through the locker rooms."

Mr. Mone continued, "That would mean the kids wouldn't be crossing the [entrance] road to get over to the rink from the parking lot. Now they cross from the cars across the [entrance] road into the building. The idea is ... eventually to eliminate that risk and have the children get out of their cars with their parents and come through the back of the building, and the parking would be over there. Overflow parking would probably still be to the left as you come into the arena, and the idea is, this access road will be designed on the property to accommodate the rink."

Tisbury Selectmen's Appointee Tristan Israel requested that Mr. Wessling **comment on Mr. Petraglia's conclusion that there would be no significant traffic impact as a result of the golf course development**. Secondly, Mr. Israel wanted to know if Mr. Wessling concurred with the 25 percent reduction in traffic as a result of the second access road to the site.

When Mr. Wessling began to answer by referencing Mr. Petraglia's report that evening, Mr. Israel interrupted him and complained that Mr. Petraglia had provided no numbers, although numbers had been provided during the Hearing sessions for the first Application. "My review is based on the Remand Plan," responded Mr. Wessling.

Mr. Israel tried to make himself clear. In the black binder submitted by the Applicant for the Remand Plan, he said, reference had been made to the traffic analysis done for the first Application in 2000. That analysis, he noted, had had "more hard numbers." "I'll have to look into that," answered Mr. Wessling.

As for Mr. Israel's second query, Mr. Wessling explained that Mr. Petraglia had not, in fact, contended that a 25 percent reduction in traffic would result from the introduction of the second access road. The 25 percent figure referred instead, he said, to the portion of the total traffic that the Applicant expected would use the second entrance off the Edgartown-Vineyard Haven Road. Mr. Israel wanted to know where that conclusion had come from. "That is an article of faith," replied Mr. Wessling.

Mr. Athearn wanted to know how many cars would be going back and forth to the golf course at the level of service described by Mr. Petraglia. Mr. Wessling answered that the level of service was calculated for the peak hour; he would bring those numbers to the next Hearing session, he said.

Questions for the Applicant's Team from the Commission Members.

Linda Sibley, a Commission member at large from West Tisbury, asked Ms. Cox **how one went about deciding where the archaeological test digs would be.** Ms. Cox responded that they did two things. First, she explained, they walked over the property and looked at environmental factors, like distance to water, slope, and soil types. In addition, research was carried out on the site files to find out where recorded archaeological sites were located.

"Our testing locations are based on proximity to known resources and on the environmental factors," Ms. Cox noted, adding that they had done about 200 test holes at the site in question.

Ms. Sibley referred to an article in the Dukes County *Intelligencer* from the 1970s that she had faxed to the Commission Offices earlier in the day. *[See the meeting file for a copy.]* The article had mentioned the **existence of a Native American burial ground in this area**, said Ms. Sibley. Ms. Cox responded that she was aware of that claim. "There are many sources talking about Native American burial grounds," she noted, "and they're often not found. I think many times when people would find materials from pre-contact, they automatically assume that a burial ground existed."

Ms. Sibley requested that Ms. Cox look at the article and respond to it at some point in the future. "Sure," said Ms. Cox. Ms. Sibley then inquired if Ms. Cox was fairly confident that there was no Native American burial ground on the site. "Yes," answered Ms. Cox, who added, "We can never discount the incidence of a single grave anywhere, but in terms of a burial ground we've come to the conclusion that it's not [there]."

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County Commission representative Daniel Flynn wanted to know if Staff had on file the **credentials of the speakers offering testimony, including those speaking in opposition.** DRI Coordinator Jennifer Rand responded that although this kind of information was on file, she has requested that the Applicant's team not waste testimony time reviewing the speakers' qualifications. Ms. Cox pointed out that anyone doing an archaeological survey in Massachusetts was required to get a permit from the State. "So we are under permit for this project, separate from the Applicant," she said.

Chilmark Selectmen's Appointee Jane A. Greene had a question about an **archaeologist's right to reveal what artifacts had been found.** "Oh no, you would know if we had anything," said Ms. Cox. "What is supposed to be confidential is the location of an archaeological site, and that is to protect it from looters. So locations of archaeological sites are exempt from the Public Information Act. But we can always talk about what we found." She added that in this case, however, the Remand Plan contained the locations of the sites.

Mr. Israel asked Mr. Petraglia **how he had arrived at his assumption that 25 percent of the total traffic to the site would use the access from the Edgartown-Vineyard Haven Road.** Mr. Petraglia explained that the 25 percent actually referred to the portion of total traffic at peak hours.

Mr. Israel then referred to an earlier traffic study at the blinker intersection. *[Staff Secretary's Note: It appears from Mr. Israel's comments that he thought the earlier study had been for the first Down Island Golf Club Application. It had, in fact, been done for the Vineyard Youth Tennis, Inc. project, and the traffic analysis had been reported on by William Scully in the Full Commission Meeting of March 22, 2001.]* In that study, Mr. Israel recalled, the traffic engineer had stated that a **2 percent increase in traffic at the blinker as a result of the new development was within the expected range of growth for the Island.** *[See page 6 of the Minutes for the Special Meeting of March 22, 2001.]*

Mr. Petraglia wanted to know if Mr. Israel was referring to a 2 percent impact on service or a 2 percent impact on traffic only. "The traffic volume, yes," answered Mr. Israel. Mr. Petraglia noted that he would submit the appropriate data.

Mr. Israel asked if Mr. Petraglia had looked at **the effect on Barnes Road traffic of the clubhouse restaurant's being open and full on a summer night.** "We didn't generate traffic for that because we're looking at peak hours," replied Mr. Petraglia. "Saturday evening would not be a peak hour." Mr. Israel requested that Mr. Petraglia submit some sort of estimate on that, if he could. "Fine," said Mr. Petraglia.

Mr. Mone wished to add a few words about the traffic expected to be generated by the golf course. "I think there's a **perception that everybody arrives at once at a golf course,**" he observed, "and it's pretty common knowledge that about 50 people an hour play golf, okay? So during the course of one hour, you might have eight foursomes arrive, 32 people. Granted, some 32 people would probably also be leaving as well. But

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it would go like a curve, and the maximum of the curve would probably be 64 people an hour. And during the other [times] it would be 12, 15, down to zero."

Mr. Mone added that with the service traffic coming early in the morning via the second access road, the arrival procedure would be "very balanced." "... [I]t isn't just an inundation of people just showing up and causing a big traffic jam," he said, "so I think it would almost be unnoticeable."

Mr. Athearn said that he understood that all the traffic would be spread out throughout the day. However, he was still interested to know **how many total trips there would be, including service deliveries, employees and club members.** Mr. Petraglia provided an estimate "from memory" of 725 daily trips. On a weekday, he said, it would be something like 650. "Those are ballpark numbers," he cautioned.

Mr. Rusczyk asked if there had been any thought or discussion about the **traffic that would be generated by a 90-house residential development.** Mr. Petraglia responded: "Generally, residences – and there is some fluctuation depending on whether it's condos or single-family homes – but a ballpark number would be somewhere between 10 and 12 daily trips for a household. So if you were talking about 90, you'd be saying 900 to 1,000. That's a good ballpark number."

Mr. Petraglia added that the difference between the last number and the golf course number, in addition to the fact that it was probably 250 trips more, was that most of the impact on the roadways by residents would be during the peak hours, with people going to work and returning. This would not be the case with the golf course, he said.

Ms. Sibley inquired whether there were **any other categories of membership besides equity and Island types.** "There are no other categories of membership," answered Mr. Mone, adding, "There are no, like, corporate members. There's none of that."

Ms. Warner asked what percentage of the Island memberships would be year-round. "All of them," replied Mr. Mone. "They have to be year-round residents in order to qualify to apply for an Island membership. They can't be summer residents or, you know, seasonal." Ms. Warner also wanted to know what the **cost of an equity membership** would be. Mr. Mone explained that this was a floating price of somewhere between \$150,000 and \$250,000. Responding to a question from Mr. Best, Mr. Mone said that an Island membership would cost \$200, plus a fee of \$10 every time the member played.

Mr. Israel wanted the Applicant to address **the need for another golf course.** Mr. Mone responded: "I think there's a desire on the Island and a strong demand not only for Island memberships for Islanders but there's also a very strong demand from people that already live here and can't get into any other golf course on the Vineyard ... and I would say conservatively there's three to four hundred people minimum that would be interested in a membership at one of these new courses." He pointed out that the Farm Neck Golf Club, for example, had not taken in a new member in five years.

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Michael Donaroma, the Edgartown Selectmen's Appointee, confirmed with Mr. Mone that there would be 150 Island members who could play seven days a week after two o'clock and could bring three guests. Mr. Mone added that they would, of course, have to call ahead and get times "like anywhere else" and that the guests could come if there was available space. "You're not going to take space away from an Island member to provide for a guest," he stressed.

Chilmark Commission member at large Robert Zeltzer wanted to know if the Applicant had set a **maximum number of equity members**. "Three hundred," replied Mr. Mone. Mr. Zeltzer then asked, "Do you have any committed equity members currently, money in the bank, so to speak?" "I'd have to say I know they do. I don't know the numbers," answered Mr. Mone.

Mr. Zeltzer observed that a failed project would ultimately be the concern of the Commission, which was why he was inquiring about the viability of the membership. Mr. Mone explained that 50 percent of the equity membership had already "been filled with not only good intentions but with money where their mouth is. They put some money down and want to be a member." He added that some people were waiting until the Applicant received approval for the project before they spent any money.

Responding to a question from Mr. Israel, Mr. Mone said that he believed that there were a number of people who would join both the Down Island Golf Club and the Vineyard Golf Club.

"If an equity member wanted to play after two o'clock, wouldn't they still be first choice?" wondered Ms. Sibley. "Practically speaking, I'd say they'd probably get first choice," replied Mr. Mone. "It's an undesirable time to play," he added. "Peak hours for golf are eight to 11." He then provided some details on how the sign-up system would work and assured Ms. Sibley that an equity member could not displace an Island member who had already signed up.

Mr. Athearn wanted to know **what Mr. Mone had meant about the equity members providing an extra degree of backup to the environmental impairment insurance policy**. [See page 5 of these Minutes.] "Does that mean the assets of the club or the assets of the members themselves?" he asked. Mr. Mone explained that if, for example, any accident occurred due to negligence on a farm, not only would the business entity of the farm be liable but also the farmer himself. "There's 300 people who are going to own this course that are going to be the responsible parties of this golf course," he added.

"Does that mean that their personal assets are on the line?" wondered Mr. Athearn. "Of course," said Mr. Mone. **James Ward, the Applicant's attorney**, asked (jokingly) to interject a few words "before he [Mr. Mone] gets us in trouble." Mr. Ward explained that the club was basically a non-profit corporation. "Non-profit corporations can have members," he said. "They aren't like shareholders or anything, they're just members."

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The liability would be to the non-profit corporation, which at that point would have a thirty, forty-million-dollar asset. It can be sued, like any other corporation, ... but it wouldn't pierce to the individual members. I suppose if an individual member did something, it's his own problem. But then that's a different matter."

Mr. Ward then turned to the subject of **the number of equity members already signed up** raised by Mr. Zeltzer. "Because of the nature of an equity membership," began Mr. Ward, "it has to be sold as a security. I mean, there are SEC requirements and things like that, and by the nature of the original offering that they had, the people did put up their money. I think that at the time when the documents were filed, either a permit or not, there was, like, a hundred and twenty-five, thirty or something or somewhere in that vicinity."

Mr. Ward continued: "The documents that were filed last summer, that either there was a permit or there wasn't – as you know, there wasn't. So the money had to be refunded to all of the members. There was some number of millions of dollars in an escrow account, and I believe that has all taken place. I mean, my firm isn't doing that, but as I understand it, that's happened. That's not to say that all of the people who were previously paying members aren't still on the list of people that are committed to join. It's just that as a matter of security law we had to give them their money back, and they haven't done a new offering yet. It doesn't really make sense to do that at just this point."

Mr. Donaroma asked if there would be **any kind of performance bond required in case of a disaster or accident that caused the course were to fail**. Mr. Ward provided a worst-case scenario, under which the course memberships never sold out. The way the documents were set up, he explained, once the Applicant got the approval and did the building and so forth, he would still be required to award the conservation restriction, the archaeological restriction and the Town's right to lease the campground, regardless. These were all based on recorded documents, he said, and could not be dissolved.

Mr. Donaroma wondered **what would happen if the Applicant started work on the course and then stopped before it was finished, leaving "a big mess."** Mr. Ward replied that yes, a performance bond would be required from all contractors. "To the extent that the Commission would like some similar guarantee flowing from us to them, that's fine," he added.

Ms. Brown asked **what the general terms of the conservation restriction were, when the restriction would kick in and what exactly the restriction would cover**. Mr. Ward explained that generally when one had a conservation restriction, one not only had to have a non-profit or conservation group to be a holder, but it had to go through the Executive Office of Environmental Affairs. "They require that any of the built areas are actually excluded," he said, "which is the reason [for] the white on [on the site plan]."

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Mr. Ward pointed to the white area on the site plan where the campground was and, generally speaking, where the archaeological restriction would be. "That's not to say that those are *unrestricted*," he noted. "The archaeological restriction itself will run to the Tribe, and [the restriction] has in its document that it prevents any cutting and everything else. So it itself is sort of a, *is* a conservation restriction. It's just not the conservation restriction that will flow to the Vineyard Open Land Foundation."

Mr. Ward continued: "The open white spot where the community campground is, as was explained earlier, because of the active uses, the Vineyard Open Land Foundation didn't feel comfortable about being the steward of that. However, the lease provides for no cutting and all those other things. So if there is a campground, they will be subject to a lease restriction that will function similar to a conservation restriction."

With respect to the conservation restriction itself, Mr. Ward went on, those areas that were completely green could not be touched once the golf course was in except for normal maintenance and repair. In other words, the trees in that area could not be touched except for standard forestry practices, disease mitigation and so forth. The golf holes themselves would be subject to the restriction, but no building, that is, only the grass that would be planted would be under the CR, he said.

Addressing Ms. Brown's second question, Mr. Ward related that the restriction would kick in as soon as it was recorded, which would probably be once the building permits were issued. "So it's almost immediate," he remarked.

Ms. Greene mentioned what she called the huts that would be located on the course. It seemed to her, she said, that a simple shelter with a roof over it would be something that a conservation restriction could include. Mr. Ward agreed. He understood that according to the plan, these would be rain shelters, with some of them even having bathrooms. However, he stressed, ultimately, this decision would be with Joel Lerner and the EOEA, and his own experience indicated that approval of the shelters would not be likely.

Mr. Best wanted to know what the gray area on the site plan was. Those areas were undivided interests that the Applicant had not yet acquired, answered Mr. Ward, who went into a protracted explanation of the proceedings in Probate Court over the past few years.

"Why would you have a conservation restriction on land that you were basically totally clearing, making into a manmade place?" asked Ms. Warner. Mr. Ward responded, "Because it prevents ever building any houses, ever. I mean, you can go around Massachusetts and find remnants of golf courses that are now housing developments, and in some instances the only thing that will protect them from becoming housing developments are conservation restrictions."

Mr. Rusczyk asked **how much total footage there would be if one were to lay down all the trails end to end.** "I can get you that," said Mr. Mechur. Mr. Rusczyk also wanted

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to know what the total acreage of the conservation restriction was. "We'll provide that to you in the next session," answered Mr. Mechur.

West Tisbury Commission member at large Andrew Woodruff asked **what the current total tax assessment was on the property in question.** "We'll get you the answer," replied Mr. Ward.

Marcia Mulford Cini, a Commission member at large from Tisbury, confirmed with Mr. Ward that there was **no charitable immunity issue** in the case of this non-profit corporation.

Testimony from Town Boards and Officials.

Roger Wey, a Selectmen from Oak Bluffs, indicated that he was speaking on his own behalf and not for his Board. *[There was a brief exchange between Mr. Toole and Ms. Greene about whether Mr. Wey should be permitted to speak in this testimony category.]* After attending three sessions of the Down Island Hearing, Mr. Wey said, he was left with a number of questions and concerns that had led him to believe that a golf course on the last large parcel in Oak Bluffs was not right.

Among his concerns, Mr. Wey continued, was the increased nitrogen loading in the Lagoon that would result from the golf course development. The freshwater springs along the shore that now flowed into the Lagoon would be replaced by water that was loaded with nitrogen and pesticides, he said. Sengekontacket Pond was also an "extremely fragile" body of water, he observed, and both ponds supported a rich shellfish industry that could be threatened by further development.

A golf course in this area, Mr. Wey went on, "would upset the balance of what up to now has been a quiet part of Oak Bluffs and the Island. It would remove a place where people can walk or just enjoy the solitude, something that's becoming more rare every year as the Island gets more crowded."

Mr. Wey cautioned the Commission to consider only the proposed project before them and not to be distracted by threats of other possible developments. "The decision on the Down Island Golf course project will determine the future of the Island we love," he concluded.

John Bradford, Chairman of the Oak Bluffs Planning Board, stated, "As we did in the previous project, we have not taken a position on this ... not that we haven't been attending the meetings and the information that you folks have. But we feel that if the Commission chooses to approve the project, it will then come before the Planning Board under our regulations, and we would have to rule on it. So we have not taken a position, either pro or con, on this project."

Testimony from Members of the Public.

Eric Williams of Oak Bluffs made the observation that anyone who had been by the Farm Neck Golf Club would know that traffic was not an issue there. In addition, only a single equity member had dropped out since the first permit deadline had expired, he said. Mr. Williams, who belongs to a third generation of summer residents, described how he and his wife had recently moved to the Island full-time, in part "to give back to the Island we love."

Mr. Williams mentioned that he was a former equity member of the club, having had his deposit refunded when the aforementioned deadline had expired. He pointed out that the Vineyard Golf Club, which had been approved, was closer to the groundwater than the Down Island Golf Club would be. "The developer and the people who are working on this have gone to painstaking lengths to satisfy all the opponents of the golf course," he remarked. "The bottom line is that we all just want to play golf."

Mr. Williams characterized walking and playing the course on Farm Neck as "one of the most sacred experiences you can have on this Island, and I've been dragged by my wife through Menemsha Hills ... and that's a beautiful experience, too. But golf courses are beautiful [and] well-maintained and keep the integrity of this Earth sound. I truly believe that."

This was not an issue of elitism, Mr. Williams pointed out, describing himself as "a hard-working middle-class citizen of the community" who had worked hard to save his money to join the club as an equity member. "And that's a good accomplishment," he noted. "I think we should all strive for that. This is America. This is absolutely America."

Mr. Williams emphasized that the "number one reason" he played golf was to enjoy the environment. And while there were many wealthy people on the Island, that was the reality, he said – "You either accept it or you don't. I embrace it because I'm an American. I am a capitalist, while at the same time I have a social-worker mentality at heart, and I believe in the environment as well." In closing, Mr. Williams appealed to the Commission members "to vote on the facts."

David Woodhouse of Edgartown described himself as a hydrogeologist with 35 years' experience. *[There was some delay in his testimony when a discussion took place about Mr. Woodhouse's not being able to show his overhead slides.]* He had reviewed the Applicant's report, he said, and he had found it, for lack of a better word, "deficient." Like Mr. Williams, he remarked, he loved the Island, adding, "I'm asking you as a Commission to leave a legacy you can be proud of."

Mr. Woodhouse then spoke of the forces that had come together over the millennia to produce the Island. "I'm telling you, ladies and gentlemen, that minus the dinosaurs, you probably live in Jurassic Park and don't even know it," he declared.

Many of his listeners had heard, Mr. Woodhouse continued, that Martha's Vineyard had a sole source aquifer. "However," he stressed, "this is just a fresh lens of water floating on saltwater. He referred the members to the fifth page of a report he had submitted entitled *Impact of Water Withdrawal by DIGC in the Southern Woodlands*, where there appeared a diagram showing the freshwater, the brackish water and the saltwater below the surface. [See the meeting file for a copy of said report.] "It's just a lens that holds back saltwater," he said, "and it can't tolerate any stress, and by that I mean any large pumping wells. If you do over-pump, you will induce saltwater to come into the particular property, in this case, the golf course."

The sixth page of Mr. Woodhouse's report illustrated the groundwater divide underneath the property. He explained how in an ideal situation, water would pass down through the soil to the water table, either in the direction of the Lagoon or of Sengekontacket Pond. However, because of the presence of impervious soils, he continued, one could not predict accurately which watershed it would flow toward. He pointed to photographs in his report of striations of clay at the Goodale's pit nearby.

"So I'm absolute convinced," Mr. Woodhouse went on, "that under this proposed golf course there is some clay. And that means this well and wells that have been proposed are not going to be as the Applicant proposed they would be." The wells would, in effect, "suck in Lagoon Pond," he said.

Mr. Woodhouse then described the local geology, which included ravines, springs along the Lagoon and watercress wetland. "And this doesn't happen if you have pervious sand and gravel," he noted. Mr. Woodhouse also spoke of how the water that was withdrawn daily from the aquifer had to be replaced with recharge. In the case of a drought, he explained, the water would seek the path of least resistance and would be sucked out of Lagoon Pond. The amount of soil on the site that had to be filled with water to meet annual requirements, he said, came roughly to the size of the Empire State Building.

The Island was at a crossroads, concluded Mr. Woodhouse, and he urged those who could afford it to visit Hawaii or Bermuda or Hilton Head to see what golf courses were doing to those places. "My final word is, you folks better wake up, like they did in Nantucket," he said, "when they woke up one morning and looked around and saw what had happened to their Island."

Alan Schweikert of Oak Bluffs stated that "Developments of Regional Impact should rise or fall solely based upon their own merits, regardless of personal opinions, perceptions and certain personal fears." He had tried to look, he said, at how this project compared with the other available alternatives in its benefits for the Town and the Island community. "Ideally, I know that we'd all like to see this land remain in its present state ... but at this point it's not a feasible or even a likely alternative," he observed.

Mr. Schweikert described how he had learned that a truly state-of-the-art golf course should be designed to flow with the natural amenities, attributes and topography of the

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land in an environmentally sound manner. "And it appears to me," he said, "that the Applicant has satisfied this criteri[on]. But certainly if you disagree, you have the ability and you have the power to condition this proposal accordingly."

In Mr. Schweikert's opinion, the Applicant was offering the Island "a very comfortable blend of conservation and recreation, and to many of us, that's how we perceive the Island, a blend of conservation and recreation." He saw the project, he said, as "an opportunity to preserve this land for all of us to enjoy in the future, whereas at the same time the owner has satisfied his own objectives."

The financial benefits to the entire community had been clearly stated, Mr. Schweikert continued. "I believe they're most generous," he remarked, "and I really hope that you will give them your most sincere consideration and attention because the reality as I see it ... is that the only feasible alternative to the proposal would be for some kind of housing development. And I believe that housing development of any serious magnitude would be devastating to the Town of Oak Bluffs financially and socially. And I do believe that Oak Bluffs would not stand alone in this, that these negative effect would course through the entire Island and eventually be felt by every one of us."

Mr. Schweikert also raised the question of whether the people of the Island wanted to be embroiled again in an extended legal confrontation, where Oak Bluffs was the pawn. This, he emphasized, would further divide the community and misdirect and drain its limited financial resources, only to have the attorneys win.

As a former Selectman and Commission member, Mr. Schweikert said, he had watched his Town struggle financially because there were not compromises from both sides; and it seemed to him that the Applicant had made some significant compromises. "And I see this as an opportunity for you to turn this entire affair into a win situation for all of us, as opposed to one where victory will be bittersweet at best for one side, leaving the attorneys smiling and the rest of us to deal with the fallout," he concluded.

Frank Dunkl, a certified water systems operator and a resident of Chilmark since 1962, described how his family had done extensive hydrological and geological surveys of Chilmark, West Tisbury and Gay Head. Over the past 40 years, he said, his family had put in dozens of wells by hand, had developed these wells by hand and had performed pump tests for their own educational purposes "because we're intensely interested in the uniqueness of Martha's Vineyard." More recently, when his family had become involved in the bottled water business, he and his brother Peter had received technical training and had become certified water systems operators.

In all his years working with conservation agencies and local, regional and State boards, continued Mr. Dunkl, he had found that "most people on those boards and governmental bodies were so overloaded that quite frankly they just don't have the energy or the time to become sufficiently involved in any one project and really get a grasp on the technical

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aspects involved." That was why Mr. Dunkl and his brother had done a number of independent tests, he said.

In the first Application process, Mr. Dunkl related, members of the Applicant's team had testified that none of the nitrates or other substances that they intended to place on the ground to support the growth of the turf would ever get into the water table. "[S]omething just didn't add up right," he remarked.

Mr. Dunkl pointed to the extreme porosity of Vineyard soil and the possibility of pockets of tight material. "But all it takes is one or two small areas of extremely porous materials that whatever is placed on the ground will find its way to those places and end up in the water table in no time," he said, comparing such a scenario to what happens when the plug is pulled in a filled bathtub.

The only way to prevent harm to the public health of Oak Bluffs, declared Mr. Dunkl, was for the Commission to forbid the use of any synthetic materials on the turf and to insist on strict monitoring and enforcement procedures.

As a member of a family who had been organic gardeners for more than 60 years, continued Mr. Dunkl, he knew, as did any scientist, that in order to render noxious materials harmless, organic action was required. "Such action cannot occur in a relatively sterile medium such as the basically silica sand which is abundant in various parts of that property," he declared. While sand was an effective filter for particulate organic or inorganic matter, he explained, it was not a filter for soluble matter, and materials used to feed grass would most likely be in a soluble form.

Mr. Dunkl pointed to the Applicant's failure to mention the effects of phosphates. "Phosphates are recognized as a violent contaminant for both freshwater and aquatic environments," he said, adding, "I don't believe that the developer has done his research..." He explained that to be broken down, the phosphates had to be tilled into the soil and, moreover, tilled into soil that was capable of the organic action he had referred to earlier.

Mr. Dunkl spoke as well about how the nitrates not taken up by the plant did not simply disappear but had to go somewhere, and that would likely be the water table because of the silica sand. This would be a danger, he noted, particularly when a heavy rainstorm followed an application.

As for the information presented by the Applicant's professionals, Mr. Dunkl went on, "I have seen so many holes ... based on the fact that they are only paid to present certain information and based on the fact that they really, in my opinion, don't really understand how much of their information is really applicable to Vineyard conditions." In addition, he said, many of these experts lacked first-hand experience with Vineyard conditions.

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Mr. Dunkl stressed that he was not opposed to golf courses. "I'm not an emotionalist," he remarked, "I'm a very pragmatic, very practical thinking person who tries always to be objective." A golf course in the right place could certainly be an asset to a community, he observed, but a golf course in the wrong place was a potential danger.

Mr. Dunkl and his brother then demonstrated with a glass-enclosed model how a small amount of contaminant could sit "rather innocuously" on a piece of porous ground until a heavy rainstorm came. This was followed by a demonstration of the influence a heavily drawing well could have on the sideways migration of pollutants. He emphasized that the likelihood of this type of scenario was greater because the presence of ravines on the site indicated clay strata, something that would promote a such sideways migration.

Moreover, continued Mr. Dunkl, there was some uncertainty about where exactly the groundwater divide under the property lay. There might be a number of different flows, he noted, since water tended to flow around clay pockets in directions that one could not have anticipated. In addition, he said, the heavy draw from the pumps might pull pollutants under the Oak Bluffs landfill into the Town's groundwater.

If the Commission were to consider approving the proposal, Mr. Dunkl declared, they should start by demanding to see the latest Source Water Assessment Program (SWAP) Report, which were currently being prepared by the Department of Environmental Protection for all public water sources, including the Oak Bluffs Water Department. He explained that the data in that report would indicate the shape and the extent of the so-called Zone II, in addition to the flow patterns. "This data you really need before you can make a determination," Mr. Dunkl said.

Michèle Lazerow described herself as a **former Commissioner who lives and works in Oak Bluffs**. "It is, as we see here, a very complicated issue," she observed. "But I hope you make decisions not based on previously made-up minds, but on open minds." All aspects of the proposal had to be looked at, she said, including what the Dunkls had just demonstrated.

Ms. Lazerow continued that she, too, had concerns. She pointed out that the Town was close to build-out, "and I don't know what else is going to be put on this land if the golf course isn't, but there are alternatives that aren't good for Oak Bluffs." She spoke of the irony of a developer using a law that was intended to promote affordable housing to build residences in a Town that had some of the most affordable housing stock on the Island already. "One thing that we don't need in Oak Bluffs," she said, "is a lot more housing."

What she would prefer to see, Ms. Lazerow went on, would be a golf course that preserved public trails, was maintained organically and had conservation protections. Although she had voted against the first Down Island Application, she stated that if she were still on the Commission, she would very carefully weigh the benefits and detriments and look closely at the likely alternatives.

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The Commission had the power, Ms. Lazerow emphasized, to build into its Decision the protections that were needed, like monitoring. Moreover, she remarked, the Applicant had demonstrated a significant degree of good faith by responding to the concerns the Commissioners had voiced in their earlier deliberations and Denial. She felt reassured by the conservation restrictions, she said, since no matter what happened to the club, the open space would be protected forever.

Ms. Lazerow concluded: "I think it's possible for them to be good neighbors, and I hope that you really seriously consider that and avoid playing Russian roulette with the folks of Oak Bluffs."

Brendan O'Neill, the Executive Director of the Vineyard Conservation Society (VCS), commented that "part of the society's mission is to advocate on behalf of the natural resources and special qualities which define this place." This was why, he said, the VCS had presented testimony in opposition to the first Down Island Application as well as to the golf course proposals in Edgartown.

"Tonight I would reiterate on the record our position in opposition to this DRI and intend to offer a written submission as well, which we hope will assist in your deliberations," Mr. O'Neill continued. He then spoke of how easily one could lose sight of the general, broader themes and larger context when wrestling with the specific. "We wanted, for purposes of this presentation, to try to step back and offer that assessment of cultural impacts of this proposal," he said, "what we might broadly refer to as sense-of-place consequences."

To offer that perspective, Mr. O'Neill introduced a long-time Vineyard visitor, **Dr. Anthony D. Cortise**, who, he noted, had degrees in civil and environmental engineering from Tufts University and a doctorate from the Harvard School of Public Health. In addition, Dr. Cortise was a founder of the Tufts Environmental Literacy Institute and was their first Dean of Environmental Programs. He had served as Commissioner of the Massachusetts Department of Environmental Protection under Governors King and Dukakis and had worked for the U.S. Environmental Protection Agency and the U.S. Public Health Service.

Mr. O'Neill went on that Dr. Cortise was now the president and co-founder of Second Nature, a non-profit organization with a mission to promote worldwide efforts to bring ideas of environmental sustainability and environmental justice into mainstream school curricula at all education levels. Dr. Cortise was also the founder and managing director for the Consortium for Environmental Education in Medicine, whose mission was to bring to medical education and medical practice knowledge of the effects of the physical and natural environment on health. Finally, he was a fellow of the American Association for the Advancement of Science, and he served on a host of advisory boards.

Dr. Cortise began by expressing "enormous respect" for public servants who were faced with difficult decisions like this one. He related how during his tenure as DEP

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Commissioner, he received about 115 calls a week from legislators wanting to know the reasons particular permits were being issued or not. "So the pressures, I understand, are tremendous," he said.

He was appearing before the Commission that evening, continued Dr. Cortise, because he hoped to get the members to think about the proposal before them from a larger perspective. He related how he had been visiting the Island for many years but had never bought property because he did not want to be a year-round resident and impact the special and fragile ecology of the Vineyard. He also spoke of the deep connection he felt to the Island and the change that always came over him on the ferry trip over.

Dr. Cortise described how he drove an electric hybrid vehicle, which emitted about one-eighth the pollution of an SUV and got about four times better gas mileage. Although he had owned it for 18 months, he said, he had never brought it to the Island because he did not want to add to the traffic. In addition, when he visited, he tried to come via public transportation.

"The reason I do this ..., the reason I'm telling you this is not because I'm here to say that I'm a great guy," Dr. Cortise explained. "I'm saying that ... I see a beautiful Island, and it is a balance between recreation and conservation. I see a jewel both in the Island and in this particular piece of property that I think I would like to see shared by as many people as possible. I'd like you to think about the cumulative impact, not just this individual project."

When projects were considered one by one, Dr. Cortise went on, "you know, it's not a problem. It'll have a little bit of an impact on the whole system. But when you add it up cumulatively, the impact can be tremendous." So despite all the wonderful things that had been done on and off Island to help preserve living systems, he pointed out, all were in decline. Every hour in the United States, he said, 264 acres of forest land and farm land were being developed; two-thirds of the fisheries were being over-fished; 11 to 12 percent of animal and bird species were either extinct or endangered; and 29 percent of the fish species were in danger as well.

Furthermore, Dr. Cortise related, global climate change posed a serious problem, and this problem would be exacerbated every time traffic was added or forest was taken down. "Forests are tremendous, one of the most important ecosystems in being able to absorb carbon," he said.

In addition, scientists were concerned about the total loading of nitrogen on a worldwide basis, Dr. Cortise reported. "No matter what happens with respect to this particular project," he said, "it's going to add to the nitrogen loading, even if it reduces some. Being a little less bad is not what we need here. We need a huge reduction in the amount of nitrogen that's actually going into our aquifers if we're going to protect all of these ponds."

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Dr. Cortise then shared three things that he had learned about ecosystems. First, ecosystems were extremely complex, and since little was understood about the natural world, humankind did not know what they were doing in manipulating nature because they did not know what they were undoing. Second, everything was interdependent, and what one did to one piece of the ecosystem was going to affect the other pieces.

Third, continued Dr. Cortise, most ecosystems were nonlinear. "You know why we have an Endangered Species Act?" he asked. "Because we don't know how to protect broad ecosystems, and the Endangered Species [Act] is the canary in the coal mine. It's the indicator that there's something wrong with the larger ecosystem. And so what we now know is that small cumulative changes that occur in the ecosystem don't seem to cause any problem at all, and then all of a sudden you have a catastrophic turning."

Dr. Cortise then declared, "You can't remake the complex intact forest system out of this golf course if the golf course fails ... You know the old Joni Mitchell song ... 'Don't it always seem to go that you don't know what you got 'til it's gone.' All right? And that's the issue. So turning ... this land into a golf course could end up, in a sense, impoverishing the community ecologically and culturally. What a jewel it is to have an intact forest like that that is within walking distance of the high school, of the elderly housing complex, in the most culturally diverse and densely populated Town on Martha's Vineyard. It's a beautiful spot. You've got to find another alternative, I think."

With so many uncertainties, Dr. Cortise went on, it would be wise to err on the side of caution. "It's a principle that's worked very well for us for many centuries," he remarked. He quoted Thomas Jefferson in a letter to James Madison: "Anyone who incurs an economic debt that he does not pay off in his lifetime means that the land and the earth belong to the dead and not the living."

Dr. Cortise then shared some personal history regarding his bout with leukemia while he was working for MEPA. "I recuperated here on the Vineyard," he said, "and I was staying down in Katama at a friend's house and I was looking over Katama Farms and Katama Plains. And I can tell you that the feeling I got there was quite different than I would have gotten if I were overlooking a golf course."

Dr. Cortise reiterated that one had to look at the long-term cumulative impact of a development like this when one was making his decision. He added that what bothered him most was "the adversity that goes on between the Town and the developers and the people that are pro and con. We have got to find different ways of making decisions, creating a vision for what we want the Island to be like, and I'd be happy to try to help you do that in the long run."

Bob Dusa described himself as a **25-year resident of the Island, with the last 23 years spent in Oak Bluffs**. "I am as concerned as everybody else about the impact this project is going to have on the Town," he said. What he had tried to do, he related, was to put

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himself in the shoes of every one of the Commission members and to focus on the concerns he felt were valid.

Five years before, Mr. Dusa continued, the Town had done a Master Plan which had included a questionnaire. "And the consensus and opinion of the population of Oak Bluffs was that the Southern Woodlands should have a major recreational facility available," he said. Although he did not know Mr. Kupersmith, he noted, it was clear to him that the Applicant was willing to put his money where his mouth was.

"He's been made to jump through hoops by the process when it was rejected the first time," Mr. Dusa went on. "I think he's come back with a reasonable plan." With so much contradictory testimony being offered, he remarked, he was beginning to question what was really factual. He felt confident, though, that the Applicant's team had done sufficient research.

Mr. Dusa commented that he also wondered how much influence public testimony like his had on the Commission members, "because we hear, really, a lot of misinformation." For example, a speaker at the last session had tried to compare the Island of Martha's Vineyard with Hilton Head Island. "In my opinion," he said, "that's comparing apples to oranges in terms of the impact that golf has had on that island." He explained that the Vineyard had always been a destination for vacationers and that golf was just a sideline. In addition, the idea of a public club was not unique to the Island; after all, he said, one could not use most of the Up-Island beaches without a Town sticker.

The leasing of the campground to the Town, Mr. Dusa went on, would be of great benefit to the Town. When he had first come to the Island in the early 70s, the cost of a campsite had been \$7 a night at the Vineyard Family Campground; now it was \$30 a person. So, he stated, the Town could benefit financially from the demand for campsites.

Another advantage of the proposal, said Mr. Dusa, was that this would be a walking golf course. One of the best exercises outside of swimming was walking, he noted. Growing up in southern Connecticut, he related, his caddying experience had been an education, allowing him to associate with judges, lawyers, doctors and businessmen. "I think that's a bonus to the community, too," he said.

Mr. Dusa also pointed to what he referred to as misinformation about the interest in golf. Moreover, someone like Tiger Woods had learned a set of values and gentlemanly behavior from the game. "These are all qualities that I think are relevant to everybody on this Island," he said.

In concluding, Mr. Dusa encouraged the Commission members to set aside their biases and to evaluate the project on its merits. There was enough property there, he added, to develop a viable project that benefited everybody.

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Paul Strauss of Oak Bluffs began by addressing the issue of nitrogen loading. The golf course, he pointed out, had been expanded by some acres, and this had allowed the Applicant to claim a much larger percentage of acreage in woodland and a much smaller percentage of acreage in land that would be disturbed. In fact, though, the managed land area had been reduced by only 6.2 acres, he said.

The major change in the approach to nitrogen loading in both ponds, Mr. Strauss continued, was the idea of an offset. "It's an interesting, at least, concept, but I wonder how valid it really is," he remarked.

Mr. Strauss noted that the Applicant's claim of a shift in the flow of wastewater and pesticides to the Sengekontacket Pond watershed seemed reasonable. He went on: "The change in loading that the Applicant reported in that black book is that from all sources the change in nitrogen loading to the Lagoon would be from 9.7 pounds per acre to 9.12 pounds per acre, and I ask just how significant a change that is. I'm really concerned when they report that the change in loading to Sengekontacket Pond would be from – you have to listen carefully for this – from 7.38 pounds per acre to 7.37 ... How significant and how real is that?"

"We all know that assumptions always had a certain amount of uncertainty associated with them," Mr. Strauss remarked. "When several assumptions are used together in calculations, the degree of uncertainty is multiplied..." The results calculated were also based on assumptions, and there was, in fact, a risk of pollution to both ponds over time, he argued. "Is that a risk you really want to take?" he asked. "I ask you, please, don't play Russian roulette with a sensitive area, basically a mini- or micro-ecosystem that includes a major forest, two stressed ponds and a major part of the aquifer."

Mr. Strauss emphasized that the Towns did not have to be "bribed" to improve water quality. Homeowners in both watersheds, he noted, had already voluntarily added nitrogen-reduction capabilities to their septic systems. In addition, as mentioned by the shellfish constables in an earlier session, grants were being given for work to reduce runoff into the ponds. "We can do this ourselves," he declared. "We don't need somebody to tell us who, what, where and when to improve the quality of our ponds."

Turning to the subject of the Applicant's offer of benefit tournaments and the use of the course by the high school team, Mr. Strauss pointed out that such inducements were already offered by other golf courses on the Island. "Just how many benefits can the golf community here support?" he asked.

Moreover, Mr. Strauss said, the idea of Island memberships was perhaps not as good as it sounded. If interest in golf on the Island was so great and, say, 1,000 year-round residents were interested, he said, there would be only one chance every 10 seasons for an interested Islander to play. "This plan is for an exclusive facility, no matter what people say, that is not connected to the lifeblood of the community, whether it be the

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Town or the entire Island," he stressed. "It will not benefit the Town or the Island. Please deny this golf course."

Jill Simmons of Oak Bluffs argued that the Town could not afford to have housing put in the Southern Woodlands. She was not sure, she said, that she could afford to pay her taxes as they were. "Mr. Kupersmith may not be someone that you like or care about one way or the other," she remarked. "It seems to me over a very long period of time he has at least come forward and tried his very best with you and put in the improvements that you have asked. I am sure that he will continue to do that."

Ms. Simmons pointed out that the Commission would have more control in the future over a golf course than it would over alternatives that had been "rumored about." She continued: "Even though that I have, too, heard that you've all made up your mind and it will be voted down, I hope that is not true. I hope you really consider this. I think it *is* in the best interest of Oak Bluffs and the rest of the Vineyard."

She was dismayed, said Ms. Simmons, by conservation proponents who promoted the idea of no development at all. "It is my understanding that this property was on the market for over 10 years," she noted. "They didn't step up to the plate then. It seems they haven't stepped up to the plate since then." There were other places, she said, that were more important to conserve.

Ms. Simmons stated that she had confidence that the Applicant could successfully put in and maintain an organically driven environment that would not impact any bodies of water, "at least not nearly as bad as housing would." She added that she did not think that it was possible at this point that the Southern Woodlands would remain as forest. "I think we all know that," she said. "Some of us haven't accepted it, and some of us don't like it, but I think that's a forgone conclusion."

She was appalled by the recent statements about bribery, commented Ms. Simmons. "I don't think anyone's bribing anyone here," she concluded. "I think that people are trying their best to do their best, and I think it's up to you to encourage them to come forth with their best."

The Hearing Officer closed the session, announcing that a final session of the Public Hearing would take place on Thursday, December 20, 2001, at 6:30 p.m. in the MVRHS cafeteria. The time was 9:30 p.m.

Report from the Nominating Committee.

Ms. Brown reported that following serious discussion earlier that evening, the Nominating Committee by consensus was presenting a slate for the Commission's consideration. "And it is to continue the three Officers from last year," she said. Those are James Vercruysse, Chairman; Michael Donaroma, Vice-Chairman; and Marcia Mulford Cini, Clerk-Treasurer.

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Announcement of Funding from the State.

Charles W. Clifford, the Commission's Executive Director, joked that the big blue check for \$210,000 on display behind the members was Virginia Buckingham's severance pay. In a more serious vein, he explained that it was a promissory note for \$30,000 per community in Dukes County to do updates for their Master Plans and their Open Space Plans under Executive Order 418. Those activities would be carried out, he said, once the build-out scenarios were completed and had been presented by Bob Durand of the Executive Office of Environmental Affairs.

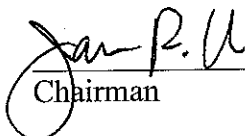
Ms. Cini wanted to know if the Commission would be working on the plans. "We have the technology to do it," replied Mr. Clifford. "The Towns have the choice of using the Commission or going to an outside consultant." Tisbury would "get the first crack at it," he added.

Mr. Clifford also announced four contracts amounting to \$43,000 that had been awarded to the Commission within the past week. Aquinnah Selectmen's Appointee Megan Ottens-Sargent wondered if Mr. Clifford would be notifying the Planning Boards and Selectmen about the EO 418 award. "Just as soon as we get confirmation of the date that the EOEA is going to give out the maps for the build-out, the Towns will be notified at that time," replied Mr. Clifford.

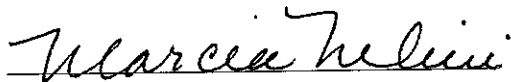
New Business: Staff Appreciation Days.

Ms. Greene made a **Motion To Give Commission Staff Off The Day After Thanksgiving**, duly seconded. There was some applause and cries of "Here! Here!" At Mr. Clifford's suggestion, she **Amended Said Motion To Add The Day Before Christmas As Well**, duly seconded. Said Motion carried, with 17 Ayes, no Nays and Mr. Flynn Abstaining, since he thought the Staff should have a choice of whether they wanted time off or more money.

The Regular Meeting adjourned at 9:42 p.m.


Chairman

1-17-02
Date


Clerk-Treasurer

1-17-02
Date

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PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; D. Flynn;
J. Greene; T. Israel; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent;
K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner;
A. Woodruff; and R. Zeltzer.

ABSENT: A. Bilzerian; E. Horne; and R.L. Taylor.

[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Special Meeting.]

***Summary of Revisions to the
Meeting Minutes of November 15, 2001
Proposed by the Commission Members
in the Meeting of December 6, 2001***

[An excerpt from the Meeting Minutes of December 6, 2001 follows immediately. It describes the revisions requested by the Commission members with regard to the Meeting Minutes of November 15, 2001.]

No revisions were proposed to the Meeting Minutes of November 15, 2001.